IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No.1030 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAH RATANLAL MOTILAL

Versus

UMA TRANSPORT COMPANY

Appearance:

MR SUDHIR NANAVATI, SR ADVOCATE for NANAVATI & NANAVATI for Petitioner No.1

MR KV SHELAT for Respondent No. 1 (ON CAVEAT)

CORAM : MR.JUSTICE B.J.SHETHNA

Date of Judgement 13/09/2002

ORAL JUDGEMENT

1. The petitioner, original defendant - tenant, which is a partnership firm has challenged in this revision application, which is filed under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Act"), the judgement and decree passed by the courts below, decreeing the suit

of the respondent - original plaintiff on the ground of non-user of the suit premises under Section 13(1)(k) of the Act.

2. Shri Sudhir Nanavati, learned senior Advocate appearing for the petitioner - tenant, vehemently submitted that both the courts below have committed a grave error in passing the decree of eviction against the petitioner - tenant on the ground of non-user of the suit premises. He submitted that though there are concurrent findings of facts recorded by the courts below on the point of non-user of the suit premises continuously for a period of six months immediately prior to the date of filing of the suit, this Court should interfere with such concurrent findings of fact in its revisional jurisdiction under Section 29(2) of the Act because there was a total misapplication of law by the courts below while appreciating the evidence of the plaintiff as well as the defendant. In support of his submission Shri Nanavati has relied upon a judgement of this Court in the case of Dr.Popatlal Premchand Sheth (Since Decd.) Through His Heirs Dinesh Popatlal Sheth & Ors. Vs. M/s. Dhanjibhai & Sons, reported in 1994 (1) GLR 71 for making his submission good. Shri Nanavati has taken me through the relevant evidence of the plaintiff's and the defendant's witnesses by supplying paper book consisting of the evidence of the witnesses which includes the report of the Court Commissioner in the earlier suit filed by the plaintiff against the defendant.

3. Shri Nanavati first invited my attention to the finding recorded by the first Appellate Court, i.e. the Appellate Bench of Small Causes Court, Ahmedabad. At the end of para 14 at page 36, the Hon'ble Members of the Appellate Bench of the Small Causes Court observed that, "According to our view, the notes of the court commissioner, who has visited the site on 5.10.1995 are not helpful to either of the party, because the relevant period for consideration is August, 1987 to the date of filing of the suit". He submitted that after making the aforesaid observation, the Appellate Bench of the Small Causes Court committed an obvious error in relying upon the said report against the petitioner. He also tried to submit that the courts below have completely misread the evidence of the plaintiff as well as the defendant. According to his submission, much weightage has been given to some of the admissions of the defendant made in his cross-examination which is in the context of non-user of the premises from 1995 onwards because evidence of defendant's witness, Bhagwandas Ratanlal, was recorded somewhere in January, 2000, wherein he has stated that

the suit premises was not in use since last 3-4 years. Shri Nanavati submitted that for the purpose of passing decree under Section 13(1)(k), the court must come to a definite finding that there was non-user of the suit premises by the defendant - tenant for a continuous period of six months immediately preceding the date of filing of the suit. In this case, the suit was filed somewhere in the year March, 1988 and finding is not recorded by the courts below that from August, 1987 till March, 1988, the suit premises remained non-used and, therefore, the judgement and decree passed by the courts below must be set aside.

4. This was vehemently objected by the learned advocate Shri K.V.Shelat appearing on behalf of the respondent landlord on caveat. The learned advocate Shri Shelat for the respondent - landlord, relying upon the judgement of the Hon'ble Supreme Court in the case of Patel Valmik Himatlal & Ors. Vs. Patel Mohanlal Muljibhai (decd.) through LRs., AIR 1998 SC 3325, submitted that when there are concurrent findings of fact recorded by the courts below and when no error of law or material irregularity has been committed by the courts below, then merely because this Court is inclined to take a different view of the matter would not be a ground for this Court to exercise its revisional jurisdiction under Section 29(2) of the Act by reappreciating the entire evidence on record.

5. However, the learned senior advocate Shri Nanavati submitted that a learned single judge of this Court in the case of Dr.Popatlal Premchand Sheth (Since Decd.) through His Heirs Dinesh Popatlal Sheth & Ors. Vs. M/s. Dhanjibhai & Sons, reported in 1994(1) GLR 71 held that if the conclusion is reached by the Courts below on misapplication of law, then this Court can certainly correct the same in its revisional jurisdiction. The learned single judge of this Court in the case of Dr.P.P.Sheth (supra) has relied upon the judgement of the Hon'ble Supreme Court in the case of Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri & Ors., reported in AIR 1987 SC 1782.

6. It is true that a learned single judge of this Court has relied upon the judgement of the Hon'ble Supreme Court in the case of Helper Girdharbhai (supra) while deciding Civil Revision Application filed by Dr.P.P.Sheth as he was of the opinion that there was a misapplication of law on the facts of that case. However, in the case of Helper Girdharbhai (supra) the Hon'ble Supreme Court has held that when two views on

evidence are possible and if lower Court is taking one, a possible view, after evaluating the evidence, then in that case, the High Court cannot substitute its own view merely because another view is possible.

7. In the case of Bhaichand Ratanshi Vs. Laxmishanker Tribhovan, reported in AIR 1981 SC 1690, the Hon'ble Supreme Court held that under Section 29(2) of the Bombay Rent Act although the High Court has wider jurisdiction than the one exercisable under Section 115 of the Code of Civil Procedure, 1908, its revisional jurisdiction can only be exercised for a limited purpose with a view to satisfying itself that the decision was according to law.

8. Having carefully gone through the reasoning assigned by the courts below while passing the decree against the petitioner - defendant on the ground of non-user of the suit premises continuously for a period of more than six months immediately preceding the date of the filing of the suit, I am of the considered opinion that while arriving at such conclusion, the courts below have not committed any error of law, which is required to be corrected by this Court. As held by the Hon'ble Supreme Court in the aforesaid cases, it is not open for this Court to reappreciate the evidence in its revisional jurisdiction under section 29(2) of the Act merely because this Court is of the opinion that another view is possible. That is not a ground for this Court to substitute its own finding when the view taken by the courts below is plausible.

9. Before parting, it must be stated that both the courts below have appreciated the evidence of the plaintiff as well as the defendant and on the basis of some of the admissions made by the defendant and some evidence of the plaintiff regarding non-user of the suit premises for a period of more than six months immediately preceding the date of filing of the suit i.e. March, 1988, which remained unchallenged, the courts below passed the decree of eviction. In that view of the matter, this court would not like to entertain this revision application and, accordingly, it is summarily dismissed at the admission stage.

10. At this stage, a request is made by Shri Nanavati, learned senior advocate for the petitioner, to extend the stay granted by the trial Court for a period of six weeks, which had expired on 06.09.2002 and which continued to remain in force till today, on oral statement made by Shri Shelat before this Court. But,

Shri Shelat objects granting of six weeks' time and submitted that only four weeks' time may be granted. However, since the stay has continued till today, I am of the considered opinion that there should not be any difficulty in granting six weeks' time on usual undertaking filed before this Court within two weeks from today, with a condition that the same would not be extended later on on any ground. Accordingly, while rejecting this revision application summarily, the respondent is restrained from executing the decree for a period of six weeks from today.

Sd/-

[B.J.SHETHNA,J]

'Bhavesh'